In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. 41.

GENERAL GRIEVANCE COMMITTEE OF THE BROTHERERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association,

Petitioner,

vs.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association, and SOUTHERN PACIFIC COMPANY, a corporation,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

BRIEF FOR RESPONDENT, GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY.

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OPINION BELOW.

The opinion of the Circuit Court of Appeals (R. 792) is reported in 132 F. 2d 194. There was no opinion in the District Court.

JURISDICTION.

Judgment of the Circuit Court of Appeals was entered on November 13, 1942 (R. 791). A petition for rehearing was seasonably made and denied with modification of

opinion on January 22, 1943 (R. 828-9). The jurisdiction of this Court was invoked by petitioner under Section 240(a) of the Judicial Code as amended by Act of February 13, 1925 (28 U. S. C. § 347).

STATUTES INVOLVED.

The statutes involved are:

The Railway Labor Act, as amended (Act of May 20, 1926, c. 347, 44 Stat. 577; Act of June 21, 1934, c. 691, 48 Stat. 1185; Act of August 13, 1940, c. 664, §§ 2, 3, 54 Stat. 785; 45 U. S. C. §§ 151-163), pertinent sections of which are set out in Appendix A;

The Declaratory Judgments Act (Act of June 14, 1934, c. 512, 48 Stat. 955, as amended, 28 U. S. C. § 400), which is set out in Appendix B;

The Norris-LaGuardia Act (Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. §§ 101-115), which is set out in Appendix C.

STATEMENT OF THE CASE.

Respondent, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company, hereinafter sometimes referred to as "Engineers" or "Engineers' Committee," filed its complaint in the United States District Court for the Northern District of California, Southern Division, seeking a declaratory judgment under the provisions of 28 U. S. C. § 400 to the effect that the Engineers' Committee, as the representative of the craft of locomotive engineers on said Pacific Lines, had the exclusive statutory right, by virtue of the Railway Labor Act, to treat, bargain and contract collectively with the Southern Pacific Company, hereinafter sometimes called the Carrier, concerning rules and working conditions which govern the craft of locomotive engineers; that certain provisions of a collective bargaining agreement entered into between the Carrier and

the petitioner, General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, hereinafter sometimes called "Firemen" or "Firemen's Committee," purporting to govern the craft of locomotive engineers, violated the Railway Labor Act and were invalid (R. 2-13). Respondent, Southern Pacific Company, is a common carrier by railroad engaged in interstate commerce (Findings 1 and 2, R. 44). The locomotive engineers in Carrier's employ comprise a separate "craft or class of employees" (Finding 4, R. 45) as that phrase is used in the Railway Labor Act, including its use in § 2, Fourth, to wit, "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." For many years before the passage of the Act, and ever since, the Engineers' Committee has been the representative designated by the majority of the craft or class of locomotive engineers, and has collectively negotiated and entered into with the Carrier agreements, hereinafter sometimes referred to as "Engineers' Schedule," concerning rates of pay, rules and working conditions of that craft (Findings 4 and 5, R. 45, 46; Engineers' Schedule (Plaintiff's Exhibit No. 1) printed at R. 326-467, offered in evidence at R. 111). Similarly, there is a separate craft or class of locomotive firemen, and the petitioner, Firemen's Committee, is the representative thereof, and has entered into a collective agreement concerning rates of pay, rules and working conditions of the firemen's craft, hereinafter sometimes called "Firemen's Schedule" (Findings 4, 5, R. 45, 46, 47); Firemen's Schedule (Plaintiff's Exhibit No. 2, printed at R. 468-636, offered in evidence at R. 111). The Engineers' Schedule (Plaintiff's Exhibit No. 1) was entered into prior to the 1934 amendments of the Railway Labor Act. Its effective date was January 9, 1931 (R. 326). The Firemen's Schedule (Plaintiff's Exhibit No. 2), effective June 1, 1939, was the first Firemen's Schedule printed and pub-

lished by the Firemen's Brotherhood subsequent to the 1934 amendments to the Railway Labor Act and the decision of this Court on March 29, 1937, of *Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515 (Plaintiff's Exhibit No. 7, R. 637-659).[1]

The provisions of the Firemen's Schedule which were the object of an attack in the complaint were Article 51, Sec. 1 (R. 7); Article 43, Secs. 1-4, 6 (R. 7-9); certain Questions and Answers appended to Article 37, Sec. 15 (R. 9, 10); and an addendum to Article 43 (R. 10-12). The decision of the court below with respect to Article 51, Sec. 1 is not involved in the instant case but is the subject of *General Committee of Adjustment of the Brotherhood of Locomotive Engineers, etc. v. Southern Pacific Company, et al.*, No. 27, October Term, 1943. Article 43, Secs. 1-4, and 6, the addendum to Article 43, and the Questions and Answers appended to Article 37, Sec. 15 are set out in full at pp. 8-12 of petitioner's brief herein and are not here repeated. It was the contention of the Engineers' Committee that Sections 2, 3 and 4 of Article 43, as written, were rules and regulations purporting to govern the seniority and mileage of engineers, particularly the circumstances and conditions under which engineers should be placed on the engineers' working lists and the regulation of engineers' mileage. The Firemen's Committee contended that Sections 2, 3 and 4, as well as Section 1, First and Second, of Article 43, were conditions under which engineers were permitted to displace firemen their junior.

The District Court held that all of the aforementioned provisions of the Firemen's Schedule were valid and that none of them violated the Railway Labor Act (R. 59). The court made the following findings of fact, *inter alia*:

---

[1] Exhibit No. 7 shows effective dates of the various Firemen's Schedules as follows: April 1, 1907 (R. 637); May 16, 1910 (R. 638); May 11, 1915 (R. 642); December 1, 1918 (R. 645); January 1, 1919 (R. 647); May 1, 1929 (R. 648); June 1, 1939 (R. 653).

"11. (a) The provisions of Article 43, sections 1, 2, 3, 4 and 6, and the Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, of the Firemen's Agreement, were and are intended to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or minimum miles or hours." (R. 52.)

"14. The Questions and Answers under Article 37, section 15, of the Firemen's Agreement were and are intended and reasonably calculated to protect the craft of firemen in their rights under said section and have a reasonable relation to the firemen's seniority rules." (R. 53.)

Neither of these findings was incorporated in the decree of the District Court. The Circuit Court of Appeals ordered that Finding 11(a), aforesaid, be incorporated in the decree as an amendment thereof (R. 818), but in the opinion also placed an interpretation and limitation upon the effect of said finding as an amendment to the decree as follows:

"* * * the interpretation in effect is that which the Engineers' Brotherhood claims, namely, 'that Sections 2, 3, 4 and 6 of Article 43 of the Firemen's Agreement shall be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said sections * * * [are] invalid in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to engineers' working lists, whether in passenger, freight, or extra service'." (R. 823.)

The Questions and Answers appended to Article 37, Section 15 of the Firemen's Agreement relate to the call-

ing of engineers for emergency service. The Engineers' Committee and the Carrier had an agreement on this matter as follows:

> "It is agreed that when it is necessary to use demoted or hired engineers as the result of the engineers' extra board being exhausted, the senior available engineer will be used, and the fact that he may have earned his maximum mileage as a fireman will not prevent him from being used as an engineer until such time as he has earned the equivalent of the maximum mileage for engineers in the combined service." (Plaintiff's Exhibit 10, R. 303-6, offered in evidence at R. 302.)

With respect to these Questions and Answers in the Firemen's Schedule, which the District Court had held valid and not in violation of the Railway Labor Act, the Circuit Court of Appeals in its decision said:

> "We agree with the contention of the Engineers' Committee that the judgment erred with respect to the interpretation of the questions and answers of Article 37, Section 15, and order stricken from Section b. of the judgment the words 'Article 37, section 15, Questions and Answers,' and that there be added to the judgment the following paragraph, succeeding paragraph b.(1).
>
> b. (2) The Questions and Answers of Article 37, Section 15, are under the Railway Labor Act valid only in so far as they relate to their rights of firemen as such under said section. They are invalid under said Act in so far as they relate to entry of a fireman into the craft of engineers." (R. 826.)

SUMMARY OF THE ARGUMENT.

Under the Railway Labor Act as construed by this Court in *Virginian R. Co. v. System Federation No. 40, et al.*, 300 U. S., 515, the Engineers' Committee, as the duly designated representative of the craft of locomotive engineers on the Carrier's railroad, has the exclusive right of

representation of that craft in all matters pertaining to rules and working conditions governing the craft, including rules governing admission thereto and removal therefrom.

The provisions of Article 43, Sections 2, 3, 4 and 6 of the Firemen's Schedule, in providing for the return to service as engineers of men who had displaced firemen upon demotion from the craft of engineers, and in providing for the regulation of engineers' mileage, contain rules which purport to govern the engineers' craft. The Circuit Court of Appeals properly held that said sections should be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said sections are invalid in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to the engineers' working lists. The Questions and Answers appended to Article 37, Section 15, of the Firemen's Schedule, concerning the calling of demoted engineers for service as emergency engineers, control the conditions under which such men may be employed as engineers, and the Circuit Court of Appeals properly held that such Questions and Answers are invalid in so far as they relate to the entry of such men into the craft of engineers. This decision accords with the decision in the *Virginian R. Co.* case, *supra*, gives effect to the right of exclusive craft representation, and does not infringe upon any rights of the firemen's craft to regulate its own craft matters.

The purpose and effect of § 1, Fifth, of the Act is to protect employees in their right of self-organization into crafts or classes. Since it is undisputed here that the two crafts of engineers and firemen have been and are recognized as crafts or classes of employees within the meaning of the Act, no question of self-organization of employees is involved, and § 1, Fifth, cannot properly be invoked to

prevent the court from defining the bargaining jurisdiction of the crafts.

The Circuit Court of Appeals correctly held that there is a line of cleavage between the crafts of engineers and firemen, and that the Railway Labor Act contemplates that such line of cleavage is at the point of imposing conditions of entry into the one craft or the other. It correctly applied this line of cleavage to Article 43, Sections 2, 3, 4 and 6, and the Questions and Answers appended to Article 37, Section 15, of the Firemen's Schedule.

The position of the Engineers in the instant case is in harmony with the foregoing declaration of craft rights. The Engineers seek only to regulate the rules and working conditions governing the engineers' craft, and do not attempt to prescribe the rules governing the firemen's craft. The claim of the Firemen, in the guise of establishing the conditions under which demoted engineers displace firemen, directly attempts to regulate the rules and working conditions of locomotive engineers, including the entry of firemen into the engineers' craft, the regulation of the mileage and, hence, earnings of engineers, and the number of engineers to be assigned to the engineers' working lists, and is an unjustified over-reaching of its rights of collective bargaining under the Railway Labor Act.

The action of the carrier in contracting with the Firemen's Committee for the rules above mentioned, was in violation of the Railway Labor Act in so far as said provisions purport or are intended to govern the engineers' craft.

In answer to the procedural questions propounded by the Court, it is our view, as stated in our brief in No. 27, that resort to the declaratory judgment procedure is appropriate here; the Federal law should be applied; and the Norris-LaGuardia Act does not negative the propriety of granting the relief sought.

ARGUMENT.

I.

THE RIGHT OF CRAFT REPRESENTATION, AS TO ALL RULES AND WORKING CONDITIONS GOVERNING THE CRAFT, INCLUDING ADMISSION THERETO AND REMOVAL THEREFROM, IS EXCLUSIVE IN THE DESIGNATED CRAFT REPRESENTATIVE.

Section 2, Fourth, of the Railway Labor Act (45 U. S. C. § 152) provides that "Employees shall have the right to organize and bargain collectively through representatives of their own choosing," and that "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." Section 2, First and Ninth, of the Act imposes the obligation on a carrier to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to treat with the designated representative of the craft for the purposes of the Act. This duty to treat with the designated representative is a duty to treat exclusively with such representative.

In *Virginian R. Co. v. System Federation No. 40, et al.*, 300 U. S. 515, 548, this Court, in construing the Railway Labor Act, held that the provisions of the Act giving to the employees the right to organize and to bargain collectively through the representative chosen by a majority of the craft gave an exclusive right to the craft representative so designated. The Act, said the court, imposed upon the carrier "the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other."

In further amplification of the negative duty the court approved and quoted from the brief of the Government filed in that case as follows:

> "The Government interprets the negative obligations imposed by the statute and decree as having the following effect:

> When the majority of a craft or class has (either by secret ballot or otherwise) selected a representative, the carrier cannot make *with anyone other than the representative* a collective contract (i.e., a contract which sets rates of pay, rules, or working conditions), *whether the contract covers the class as a whole or a part thereof.* • • •
>
> If the majority of a craft or class has not selected a representative, the carrier is free to make with anyone it pleases and for any group it pleases contracts establishing rates of pay, rules, or working conditions.'" (Italics ours.)

There are admittedly two separate crafts or classes employed in engine service by the Carrier. There is the craft or class of locomotive engineers, which has been recognized by the Carrier as a separate craft or class of employees for all purposes of the Railway Labor Act (Finding 4(a), R. 45), and the Engineers' Committee is the sole designated representative of such craft or class (R. 45-6, Petitioner's Br. pp. 2, 21). There is a separate craft or class of locomotive firemen employed by the Carrier (Finding 4(a) R. 45), and the Firemen's Committee is the designated representative of such craft or class (Finding 4(a) R. 46). The Firemen's Committee is not, and never has been, the representative of said craft or class of locomotive engineers on the Carrier's railroad.

The holding in the *Virginian R. Co.* case above set out negatives any contention that there should or could be dual representation respecting the rules and working conditions of a particular craft. It expressly eliminates collective bargaining with a carrier by a minority interest within a craft, and no matter how great or how small the minority interest it has no voice in the making of collective contracts for the craft, or any part thereof.

Just as the holding in the *Virginian R. Co.* case eliminates collective bargaining for the craft by the representative of a minority within the craft so does it eliminate

representation concerning craft matters of a particular craft by the craft representative of another craft. Dual representation of any and all kinds is outlawed.

The Engineers' Committee contends that as the duly designated representative of said craft or class of locomotive engineers employed on the Carrier's railroad, and in accordance with the pronouncement of this Court in the *Virginian R. Co.* case, it has the exclusive right to negotiate with the Carrier, and the Carrier has the duty to negotiate exclusively with it, as to the rules and working conditions governing said craft or class of locomotive engineers employed on said railroad, including all the rules which pertain to and govern entry into, remaining in, or removal from said craft, or which pertain to service to be performed as locomotive engineers by the members of said craft.

If a rule is one which governs service to be performed as an engineer, or the amount of work which may be performed by an engineer, or governs the number of persons who at a particular time may be permitted to work as engineers, or if it governs employment in, admission to, or removal from, the craft of engineers, then such rule is exclusively, we submit, a matter for collective bargaining by the engineers' craft representative. The decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case, under the heading "B" therein (R. 815-826), gives effect to the exclusive right of collective bargaining by the craft representative as herein contended and as held by this Court in *Virginian R. Co.* case. It stated (R. 824) that the Railway Labor Act "contemplates that the cleavage of the powers of the firemen's and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other," and it held invalid rules of Article 43 of the Firemen's Schedule "in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to

the engineers' working lists" (R. 823). In accordance therewith, each of these crafts has the control of all matters at and beyond the point of entry into the craft and no representative of the other craft may cross the dividing line between the crafts for the purpose of collective bargaining with the Carrier. Such a construction of the Act results in an understandable, clear-cut, workable rule. It recognizes the right of the representative of each craft to make all the rules governing its craft or the members thereof in every particular where the rules governing the craft as a craft are involved. Such construction is fair, just and equitable to each craft. No craft, nor the representative thereof, should desire or be permitted to contract concerning services to be performed in another craft, or to set the terms of admission to or removal from such craft. Unless the designated representative of each craft shall have the exclusive right to bargain with the carrier for the rules governing that craft, the designation of such a representative may well become little more than a perfunctory gesture. The right of craft representation is a valuable property right (*Texas & N. O. R. Co. v. Brotherhood of Railway & Steamship Clerks*, 281 U. S. 548, 571), and in enacting the provision for the designation of a craft representative by a majority of the craft in the 1934 amendments to the Railway Labor Act, Congress, we submit, did not intend that such designation should be of a perfunctory nature but intended that it should function vitally and exclusively, as held by this Court in the *Virginian R. Co.* case.

II

THE CIRCUIT COURT OF APPEALS DID NOT ERR IN HOLDING (1) THAT SECTIONS 2, 3, 4 AND 6 OF ARTICLE 43 OF THE FIREMEN'S AGREEMENT SHALL BE LIMITED IN THEIR APPLICATION TO CONDITIONS UNDER WHICH DEMOTED ENGINEERS ENTER, REMAIN IN, AND LEAVE THE FIREMEN'S CRAFT, AND (2) THAT SAID SECTIONS ARE INVALID IN SO FAR AS THEY SEEK TO PRESCRIBE CONDITIONS OF RE-ENTRY INTO THE ENGINEERS' CRAFT OR TO REGULATE THE MILEAGE OF ENGINEERS OR THE NUMBER OF ENGINEERS TO BE ASSIGNED TO THE ENGINEERS' WORKING LISTS.

1. The decision of the Circuit Court of Appeals gives effect to the right of exclusive craft representation.

Article 43, Section 1, First and Second (R. 604, Petitioner's Brief, pp. 8, 9) is expressed in the language of condition and states the conditions under which demoted engineers may be returned to service as firemen. Since this section purports only to set up conditions for entry of demoted engineers into the firemen's craft, the Engineers' Committee did not press any objection thereto in either the District Court or the Circuit Court of Appeals. Sections 2, 3 and 4 of said Article are not expressed in the language of condition. As written, they appear to be independent of the conditions expressed in Section 1 and purport to regulate engineers' working lists and purport to set forth conditions of re-entry into the engineers' craft and independently to regulate the mileage which engineers working in the craft of engineers may make. Section 2 relates to hired engineers. Section 3 relates to the return of demoted engineers to service as engineers in the craft of engineers, and Section 4 purports to govern the terms and conditions for the regulation of the engineers' working lists including the amount of mileage which may be made by engineers. In the District Court, however, the Firemen's Committee and the Carrier took the position

that Sections 2, 3 and 4 were conditions under which demoted engineers might displace firemen and were to be considered "conditions" included in the phrase "under the following conditions" of Section 1. The District Court adopted this view of the Firemen's Committee and the Carrier, and in connection therewith made Finding of Fact 11(a) (R. 52) hereinbefore quoted. All of the provisions of Article 43, as well as the Addendum thereto, it was found,

> "were and are intended to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or minimum miles or hours." (R. 52.)

The same contention respecting Sections 2, 3 and 4 was made by the Carrier and the Firemen's Committee in the Circuit Court of Appeals, and that court ordered Finding 11(a) incorporated in the decree. In adopting this contention the Circuit Court of Appeals (R. 818) stated that Section 1 of Article 43 was to be interpreted as if the words "including Sections 2, 3, 4 and 6 below" were inserted after the words "under the following conditions" (R. 819). However, the Circuit Court of Appeals placed a definite limitation and interpretation upon the effect of these conditions. Said the court:

> "* * * the interpretation in effect is that which the Engineers Brotherhood claims, namely, 'that Sections 2, 3, 4 and 6 of Article 43 of the Firemen's Agreement shall be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said sections * * * [are] invalid in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engi-

neers to be assigned to engineers' working lists, whether in passenger, freight, or extra service." (R. 823.)

This interpretation is a direct application of the construction placed upon the Act by the Circuit Court of Appeals as follows:

> "It is our opinion that the Act contemplates that the cleavage of the powers of the firemen's and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other." (R. 824.)

This construction and application of the Act are in full accord with the decision in the *Virginian R. Co.* case, *supra*. They recognize and give effect to the right of the Engineers' Committee to make all the rules governing the craft or the members thereof in every particular where the rules governing the craft as a craft are involved. They recognize and give effect to the right of the Engineers' Committee to negotiate exclusively for the rules which govern admission to the craft, remaining in the craft, and leaving the craft, as well as the regulation of the mileage of engineers. They likewise recognize the right of the Firemen's Committee to negotiate similarly concerning the firemen's craft.

2. The decision of the Circuit Court of Appeals does not interfere with any rights of the firemen's craft.

The Engineers' Committee denies any claim that the interpretation made by the Circuit Court of Appeals aforequoted, or that the contention of the Engineers' Committee, invades or infringes firemen's seniority rights or the exercise thereof, their "right" of promotion, or any other claimed "interest" of the firemen's craft. The contentions of the Engineers' Committee throughout this litigation are based upon the fact that there is a separate craft or class of locomotive engineers for which the Engineers' Commit-

tee is the accredited representative, and a separate craft or class of firemen for which the petitioner is the accredited representative. The necessary legal consequence, under the Railway Labor Act, of these conceded craft distinctions is that each craft representative has the exclusive right to make all of the rules governing its craft, notwithstanding such claims of another craft or its members.

(a) Neither the firemen's "right" of promotion nor their seniority rights as firemen are involved in the rules here in issue, and are no basis for the regulation of engineers' rules by the firemen.

So far as legal considerations are concerned, the crafts are entirely separate and independent. Legally speaking, the Carrier, in the absence of contract to the contrary, could hire all of its engineers from sources other than the craft of firemen on its railroad. So far as any statute or basic law is concerned, it would not be required to obtain its engineers from its craft of firemen. Conveniently it might do so, but legally it would not be required to do so. The fact that it does obtain its engineers from its craft of firemen, whether as a result of agreement or otherwise, does not affect the separateness of the crafts. If the situation prevailed that engineers were obtained from sources other than the Carrier's craft of firemen, there would be no questioning of the sole right of the engineers' craft to do the things the Engineers' Committee is contending for in this litigation. No one would then question the exclusive power and right of the Engineers' Committee, under the Railway Labor Act, to make with the Carrier all rules for the government of the craft. Obviously, the "economic interest" (discussed p. 21 *post*) of those seeking admission to the craft of engineers would be affected by the rules governing the craft, but just as obviously the desire of those not working in the craft of engineers, or the effect upon their economic interest in obtaining such employment, would not be factors affecting the exclusive legal right of the en-

gineers' craft to determine its own rules. We submit that this exclusive right of the engineers' craft is in no wise affected by the fact that the Carrier obtains its engineers from the firemen employed on its own railroad. Irrespective of how the rules governing the engineers' craft may affect the members of the separate firemen's craft, whether in their personal desires or economic interests, the firemen's craft has no right to make such rules with the Carrier. The Engineers' exclusive right so to do is just as complete as if all engineers were hired from other railroads or were obtained from other sources than the Carrier's firemen employees.

Petitioner concedes (Brief p. 19) that when there is no promotion from one craft into another there could be no dispute over the right of a craft to contract concerning the seniority rights of its members, but contends that, since the sole open highway of promotion is from firing service into engineers' service, it is unreasonable to permit the engineers' craft to determine the conditions of promotion thereinto, and particularly so when the Firemen are granting to the engineers' craft the privilege of displacing senior firemen upon demotion from the engineers' craft (Brief p. 19). There is no inherent or legal right to promotion. There is no promotion from machinists' craft, or electricians' craft, or boilermakers' craft into some other craft. Promotion of men working in those crafts is confined solely to whatever promotion there may be within their own craft as determined by their own craft rules. There is no promotion from the craft of engineers to some other craft. That the work which the firemen do enables them to qualify for work in the engineers' craft, or that their craft agreement requires them to qualify for promotion, does not carry with it any legal *right* to determine that they shall be advanced to employment as engineers and enter into the engineers' craft under rules and regulations of the firemen's craft. Concerning the "privilege" of demoted engineers displac-

ing senior firemen, the granting or withholding thereof should be within the jurisdiction of the firemen's craft; but likewise the granting of the "privilege" of promotion into the engineers' craft and the "privilege" of exercising seniority rights therein should be the exclusive right of the engineers' craft. There is nothing indefensible or unreasonable in the contention of the Engineers for the right to regulate entry into their craft when at the same time they are willing to agree that the Firemen have the right to control the acceptance of demoted men into the firemen's craft. On the other hand, it is entirely unreasonable for the Firemen to contend, as they do here, that they have the right to control both demotion into the firemen's craft and entry or re-entry into the engineers' craft.

The Firemen contend at page 14 of their brief, that they have a right to contract regarding the promotion of men from firing service, *whether demoted engineers or not*, as a condition upon the exercise of the demotion privilege. (Italics ours.) It is said (Brief, p. 28) that in addition to the interests of the Firemen in requiring restoration of demoted engineers to engineers' service, the "Firemen have a profound interest in maintaining their seniority rights of promotion from firing service, whether these rights are exercised *by demoted engineers or by firemen qualified for promotion.*" (Italics ours.) The argument following is directed to the contention that since the rules in the Firemen's Schedule require that firemen qualify themselves for promotion, qualified firemen are entitled to become engineers and that the seniority rights of a firemen entitle him to a job as an engineer. Thus it appears that what the firemen have been and are aiming at is to use the demotion rule as a device to provide not only for the return of demoted men to engineers' service but also for *original promotion.* The implication appears to be that Section 4 of Article 43 which, as written, is a complete set of engineers' mileage regulations, is to be construed not only

as one of "the following conditions" mentioned in Section 1 relating to the displacement of firemen by demoted engineers, but also as a guarantee of advancement of previously unpromoted firemen to promotion and work on the engineers' lists, and to require that firemen would have to be promoted and placed upon the engineers' working lists under these mileage regulations in the Firemen's Schedule. Thus, the Firemen would make and control the conditions of entry into the engineers' craft and the amount of engineers' mileage and earnings, as well as the conditions under which engineers may be demoted to firing.

Seniority rights of a fireman are not seniority rights to a job as an engineer. Firemen's seniority is one thing; engineers' seniority is another. Even Section 4 of Article 42 of the Firemen's Schedule (R. 600) quoted in part by petitioner (Brief, p. 29) to the effect that, after passing the required examination, promotion and seniority will date "from first service as engineer" does not purport to give any right to a job as engineer or to determine the time when first service as an engineer will occur. Firemen's seniority is the result of the firemen's craft agreement with the Carrier and may properly relate only to the seniority of firemen within the craft and in the performance of their duties as firemen. Engineers' seniority is the result of the engineers' craft agreement with the Carrier, and may deal only with the seniority of engineers in the performance of services as engineers. The firemen's craft does not establish engineers' seniority, nor can the Firemen lawfully provide in their agreement with the Carrier any terms or conditions which govern engineers' seniority or the exercise thereof. All matters pertaining to the exercise of engineers' seniority—and these include entry into the craft, engineers' mileage rules, the regulation of the engineers' working lists, and the calling of engineers to emergency service—belong exclusively to the engineers' craft. Petitioner's assertion that the seniority rights of firemen entitle them to jobs as en-

gineers is without basis, for the entry into the engineers' craft means performance of service as an engineer, and constitutes an exercise of engineers' seniority which must be, and legally is, controlled by the engineers' craft agreement.

The Engineers have contended, and the Circuit Court of Appeals upheld the contention, that while, in conditioning the demotion privilege, the Firemen may require the demoted engineers to leave firing service under specified conditions, they cannot require the men so removed from the firemen's craft to be returned to service in the engineers' craft. *A fortiori*, the Firemen cannot lawfully make an agreement with the Carrier providing that men who have qualified for promotion under Firemen's rules, but who have never worked as engineers, shall be employed as engineers and placed upon the engineers' working lists under mileage regulations of engineers agreed upon between the Firemen and the Carrier. Only the Engineers' Committee and the Carrier may lawfully agree as to when additional employees shall be placed on the engineers' working lists. There is no infringement of firemen's seniority or of any so-called right of promotion involved in such a position. The Engineers are not attempting to prevent the Carrier from agreeing with the Firemen that qualified firemen shall be eligible for employment as engineers, when the services of additional engineers are needed. The Engineers do insist, however, that they, and they alone, under engineers' mileage regulations, have the right to agree with the Carrier as to when new engineers, from whatever source employed, are to be placed on the engineers' working lists.[1]

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[1] Compare brief of the Government, p. 40. It is there said: "Our position as to the right of the Firemen to enter into agreements which grant engineers conditional rights as firemen would not permit the use of the condition as a method of controlling engineers' terms of employment which do not immediately affect the economic interest of the firemen."

The correctness of the holding of the Circuit Court of Appeals is emphasized by this contention of the Firemen concerning promotion of previously unpromoted firemen. One of the reasons why the Engineers made Article 43 a subject of attack in this case was that Section 4 thereof, as it is written, purports to be a complete set of engineers' mileage regulations and purports to control engineer employment. If it was sought, and apparently it was, by the provisions of Section 4 to provide a regulation by the Firemen of engineers' mileage after all demoted engineers had been returned to service as engineers, whether in connection with the promotion of firemen, or otherwise, then the interpretation placed upon the decree that such provisions are invalid in so far as they seek to regulate the mileage of engineers or the number of engineers to be assigned to the engineers' working lists, has effectively prevented such control of engineer employment by the Firemen. The Firemen should not be permitted to control the mileage or employment of the engineers' craft. An affirmance of the holding of the Circuit Court of Appeals will prevent them from doing so and will leave this control with the engineers' craft where it belongs.

(b) The economic or other interest of firemen in engineers' rules does not entitle them to negotiate or contract for engineers.

It is suggested in the brief for the United States *amicus curiae* (p. 36) that in addition to a future interest of firemen in becoming engineers they have an "economic interest," in the conditions of employment of engineers. This, it is suggested, results from the fact that the engineers' craft rules governing the amount of work to be performed by engineers, and thus the number of engineers to be employed on the engineers' working lists, has an effect on the promotion of firemen to engineers, and also from the fact that the higher the engineers' mileage regulations the more engineers will drop back to firing and more junior firemen will be let out of service. While

this economic interest of the Firemen in the conditions of employment for engineers, in the view of the Government (Brief, p. 38), does not appear sufficient to deprive the engineers of the exclusive right to bargain for their own working conditions, we desire to comment further thereon.

Bearing in mind that it is the position of the Engineers that they regulate entrance into the engineers' craft and that the Firemen regulate the matter of the entry of demoted engineers to firing service, it appears that such so-called "economic interest" is no more than a matter which may be taken into consideration by the firemen's craft representative in negotiating the rules for the government of that craft, including the conditions for admission thereinto when engineers are demoted from the engineers' working lists. We take it that any persons who desire to obtain employment in a particular craft have an "economic interest" in the conditions governing employment in that craft. For example, suppose an employer has 100 machinists in his employ working 9 hours a day and there are 50 unemployed machinists seeking work from this employer. If the 100 machinists were to work only 6 hours per day the employer would then be able to take on the additional 50 men seeking employment. We think in such case the 50 unemployed machinists have an "economic interest" in this employment. Yet this economic interest, even if it amount to a dire need, does not give these unemployed machinists any legal right to demand that the working hours of the employed machinists be reduced from 9 to 6. Let this situation be transferred to a similar one regarding the employment of machinists by a carrier governed by the Railway Labor Act. Let it be assumed that the carrier is employing 100 machinists at 9 hours a day, and that there are 50 machinists on that carrier's seniority roster of machinists who are furloughed from their employment and who would be taken back to work in their order of seniority if the machinists' craft representative and the

carrier would agree upon a 6 hour work day. Again, the 50 furloughed machinists have an economic interest in being returned to employment, but their interest is at most a minority interest, and regardless of the extent of such interest or their personal needs, they do not have any right to negotiate with the carrier concerning a change in the rules governing the machinists' working day. So, they remain out of work unless and until the craft representative and the Carrier agree on a greater spread of the available work. Similarly, firemen who are furloughed from service as such because the rules agreed upon between the firemen's craft representative and the carrier do not spread the work sufficiently to enable them to return to work at a given time, have an economic interest in the rules governing the firemen's work which may be performed by firemen in a given period. But however much they may desire that a change in such rules be made, their interest is governed by the wishes of the majority, and their economic interest and economic need give them no right to bargain thereon. We think that the situation is the same in the case of engineers who have been demoted from the engineers' craft and are working as firemen in the firemen's craft. They may desire individually or as a group to return to service in the engineers' craft, but neither such desire on the part of these individuals nor the desire of the firemen's craft to advance them to service in the engineers' craft confers upon the firemen's craft or its representative any legal right to interfere with the engineers' craft in its exclusive right to determine the rules under which such men may be returned to service as engineers. Neither personal interest, minority interest, nor economic interest is a criterion by which collective bargaining rights are determined under the Railway Labor Act. The only interest which is established by the Railway Labor Act as a criterion for the determination of the right of collective bargaining concerning a craft is the interest of the majority of the craft.

Petitioner refers (Brief pp. 21, 24) to what it calls an overlapping jurisdiction between the crafts. We submit that the crafts of engineers and firemen and their respective jurisdictions do not overlap. Their functions are entirely different. A man working on a locomotive is either an engineer or a fireman. An engineer "runs" and a fireman "fires" a locomotive. The respective duties and responsibilities of the two crafts remain constant and are, and always have been, separate and distinct. The personnel of the craft may and does change as men move from the one craft to the other under the respective craft rules, in the application of the mileage regulations resulting from the fluctuation in business, or from other causes. Relative to the total number of men employed in the two crafts, an ebb and flow exists only in case of comparatively few men, that is, the youngest men in point of seniority on the engineers' working lists and the oldest men in point of seniority on the firemen's working lists.[1] In any event, the movement or ebb and flow from one craft to the other does not affect the separateness of and the clear distinction between these established and recognized crafts.

The "line of cleavage" between the crafts has always existed. On the Southern Pacific Railroad engineers have

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[1] In petitioner's brief (p. 4) it is stated that in the movement of men from one craft to the other with fluctuations in traffic "there have been times when every fireman in service held a seniority date as engineer." Apparently this statement is in error. Finding 6 (R. 47-8), which is cited as the basis of the statement aforesaid, shows that on January 1, 1940, approximately one-fifth of the firemen then working had been demoted from the engineers' working lists, and that on July 1, 1940, approximately one-seventh of the firemen employed had been demoted from the engineers' working lists. The establishment of a "seniority date" as engineer has little or no significance in this connection. Some of the demoted men back firing may have worked only one day as an engineer, which would have established their "seniority date." Others may have worked only a few days or for short periods during seasonal or other temporary peaks of business. Most of the demoted men probably should be termed firemen who have worked briefly as engineers, rather than demoted engineers.

at all times worked under engineers' separate craft agreements and firemen have worked under firemen's separate craft agreements (Plaintiff's Exhibit 7, R. 637-663). The separate jurisdiction of the two crafts has always been recognized by the Brotherhood of Locomotive Firemen and Enginemen, as well as by the Brotherhood of Locomotive Engineers. In the Chicago Joint Agreement, to which petitioner referred in its statement of the case (Brief 5), which was originally entered into between the two Brotherhoods in 1913 (R. 669), revised in 1918 (R. 684), and again in 1923 (R. 701), it was expressly recognized by the two Brotherhoods that each craft had its own jurisdiction and that each craft was to be represented in that jurisdiction by its own representative. Article 1 of that Agreement provides as follows:

> "(a) We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers; and, conversely, the right to make and interpret contracts, rules, rates and working agreements for locomotive firemen and hostlers, shall be vested in the Brotherhood of Locomotive Firemen and Enginemen; * * *." (R. 669, 684, 701.)

While thus specifically recognizing the separate jurisdictions of the two crafts, the two organizations also recognized that disputes would arise between the crafts, and the purpose of the agreement was to try to provide a means of settlement of such inter-craft disputes. This agreement was abrogated by the Brotherhood of Locomotive Engineers in 1927 (R. 201) because the purposes sought were not accomplished, but nowhere in the Chicago Joint Agreement is any statement to be found which would justify a claim that the crafts or their jurisdictions are, or ever have been, anything but separate and distinct.

Petitioner, of course, concedes that there are two separate crafts or classes of engineers and firemen (R. 25, Brief

21), but argues that there is a "subject matter of contract" in which the members of two crafts are interested, and further contends that the carrier could make the same contract with both organizations or could make a separate contract with either covering a subject matter of common interest "so long as that contract did not infringe upon an exclusive jurisdiction of the other craft." We submit that there is no subject matter concerning rules or working conditions of the engineers' craft or admission thereinto or removal therefrom which is not within the exclusive jurisdiction of the engineers' craft, and that there can be no interest of firemen in the rules and working conditions which govern the admission to or removal from the craft of engineers or the performance of service as engineers which will diminish or modify the exclusive right of the engineers' craft to bargain for those rules or working conditions.

Petitioner also concedes that if the craft representative were seeking to make a contract regarding a subject matter in which the members of its craft had *no* interest or only a *secondary* interest (Brief p. 25) the court would be justified in holding that such contract was invalid if in conflict with an existing contract held by the craft which clearly had a direct and immediate interest in the subject matter. We assume it will not be questioned that the engineers have a direct and immediate interest in all of the rules which govern the engineers' craft. Certainly the interest of the engineers therein is primary and basic. No interest of men in another craft, whether arising from their desire to be promoted into the craft or from the fact that the normal and regular working of the engineers' rules affect their economic interest or otherwise, can be as primary, direct, and immediate as the interest of those employed in the craft. While it is denied that either the firemen's craft as a craft, or the individual members thereof, have any interest in engineers' rules which entitles the firemen's craft represen-

tative to bargain thereon, it seems to us to be self-evident that whatever the interest the firemen may claim in engineers' rules, it must be *secondary* to the interests of the engineers' craft. A secondary interest residing in another craft is far removed from the primary interest of the majority of the craft which is the prerequisite interest for collective bargaining concerning the craft rules.

Petitioner further asserts (Brief p. 25) that a court would not be justified in holding that an organization has no right to make a contract concerning a subject matter in which its membership has a direct and vital interest, and further asserts the fact that another organization may have an interest in the same subject matter does not authorize the court to choose between the two to grant a jurisdiction to one and deny it to the other, particularly where the two organizations have similar contracts with the carrier. We assume that petitioner in using the words "organization" and "membership" refers to a craft organization or craft representative and craft membership. While it is not conceded but is denied that the Firemen have a direct or vital interest in the engineers' craft rules, we repeat that the criterion by which collective bargaining rights concerning a craft are determined is the interest of the majority of the craft. A minority within a craft has a present, direct, and vital interest in the craft and its rules. Yet it has no right to treat or bargain for the craft for any of the rules governing the craft or the service performed by minority members. Any right of the minority to contract was definitely eliminated by § 2, Fourth, of the Act. Certainly petitioner cannot successfully contend that any alleged interest of the Firemen or firemen's craft in engineers' craft rules is more direct or vital than the interest of the craft minority. Every rule made by the craft representative immediately and directly, and not secondarily, affects the earnings and working conditions of the minority members of a craft. Every engineers' rule

has a direct impact upon their economic interests. But regardless of interest and how the minority is affected, the minority has no voice in determining the rules of the craft. When Congress gave the exclusive right of craft representation to the majority representative it not only denied, we submit, to the minority the right to make the collective contracts governing the craft, but it also prohibited the representatives of all other crafts, no matter what their alleged interest, from contracting collectively concerning such craft.

Even if the Firemen's Committee enters into a contract with the Carrier concerning rules and working conditions of the engineers' craft in terms identical with those agreed upon between the Carrier and the Engineers' Committee (see Brief pp. 25, 26), it does not have the right to do so. Any contracting concerning a particular craft by anyone other than the true craft representative violates the exclusive right of the craft representative, no matter whether such contract relates to identical conditions or conflicting ones. In addition to the illegality involved, the inclusion of identical terms in different contracts by the different crafts would lead to many possible practical difficulties. Objections would be met if the craft representative desired to change the terms of its contract. There would be possibilities and probabilities of differences in interpretation of identical language. If it be proper for the Firemen to include rules governing the engineers' craft in the Firemen's Schedule, the Firemen's interpretation of the rules may be different from the interpretation of the identical rules by the engineers' representative. Further, as shown in this case, engineers' rules with reference to the regulation of mileage for engineers include other rules not found in the Firemen's Schedule which bear upon the interpretation of the mileage regulation. For example, Article 32, Section 6, paragraph (h) of the Engineers' Schedule (Plaintiff's Exhibit 1, R. 438) provides that working lists in

the respective classes of service are to be handled separately, and paragraph (j) of Section 6 of Article 32 of the Engineers' Schedule (Plaintiff's Exhibit 1, R. 438) provides that the limitations with respect to the replacement of engineers shall not apply when the demoted engineers have been returned to service as engineers. Neither of these rules is found in the Firemen's Schedule. These objections are merely illustrative of practical reasons apart from authority why rules which regulate or purport to regulate engineers' mileage shall not be allowed in a schedule governing firemen.

(c) The Engineers' position is equitable.

In the petitioner's brief (p. 17) it is said that "the Firemen permit the demotion of engineers to firing service," hence they are concerned with the promotion of men from firing service and have a *right* to insist that firemen shall be promoted when engineers are running a sufficient mileage to provide reasonable employment for demoted engineers—reasonable employment, as we understand this contention, to be determined by the Firemen. It is also said (p. 18) that it seems plain that the Firemen can require that engineers shall only be demoted when there is insufficient work for all of them. It is then added "It should be equally plain that the Firemen have the right * * * to require that such demoted engineers shall be promoted back to engineer service when there is sufficient employment for more engineers than are working"—"insufficient work" for engineers and "sufficient employment" for engineers again, as we understand, to be determined by the Firemen. It is also said (p. 19) that "a limitation" that entry into the engineers' craft shall be controlled by the engineers' craft, becomes "plainly indefensible when the firemen's craft at the same time is granting to the engineers' craft the privilege of demotion and the privilege of displacing senior firemen."

Each of these contentions is a *non sequitur*. If the Firemen "permit" or "grant" to demoted engineers the right to go back firing, by the same token the Engineers "permit" and "grant" to firemen the right of entry into the engineers' craft. If the Firemen permit and grant to demoted engineers the right of re-entry into the craft of firemen, they may properly limit the time within which such demoted men may remain therein. By the same token the Engineers permit and grant to firemen entry and re-entry into the craft of engineers upon conditions of their own making. Each craft has the right to make its own rules for the removal of men therefrom, but neither craft has the right to say that upon the removal of a man from its craft he shall be required to be accepted by the other craft. Thus, as illustrated with respect to Section 3, Article 43 of the Firemen's Schedule (R. 604) the Firemen exceeded their power and authority when they provided that "engineers taken off under this rule (i.e., Article 43, Section 1) shall be *returned to service as engineers*, etc." If this rule had been stated so as to express the full limit of petitioner's authority as the representative of the firemen's craft it would have been substantially as follows: "Engineers taken off under this rule shall be required to *leave service as firemen*, etc." The effect of the holding of the Circuit Court of Appeals on Article 43, Section 3, is to limit it in the manner suggested. It leaves the Firemen with full authority to determine the conditions under which demoted men may enter the firemen's craft and how long they may remain therein. It leaves for agreement between the Engineers and the Carrier the conditions under which such men who were removed from the engineers' working lists by operation of the engineers' mileage rules shall be permitted to return to the engineers' working lists.

The Engineers' contention, as upheld by the Circuit Court of Appeals, is one of correlative rights for the two crafts, that is, the engineers have the exclusive bargaining

rights as to their craft and the firemen have the exclusive bargaining rights as to their craft. If such contention is not sustained, then the bargaining rights of the crafts and their representatives are not exclusive, and the engineers' craft and its representative have the same rights to contract collectively concerning firemen's rules and working conditions as the firemen's craft or its representative may have concerning engineers' rules and working conditions. We believe such dual representation is impractical, unworkable, and contrary to the right of craft representation by the representative chosen by the craft majority, as provided in Section 2, Fourth, of the Railway Labor Act.

The position of the engineers' craft is equitable. It gives to each craft complete control of its own craft matters and rules without interference from the other. Under it there could be no regulation by Engineers of the firemen's craft including the conditions of entry thereinto, and there could be no abuse of the demotion privilege, as to which petitioner professes fear (Brief pp. 5, 16), since the Firemen would have the right to control the conditions of entry, remaining in, and removal from the firemen's craft. Similarly, there could be no regulation of the engineers' craft by the Firemen including conditions of entry thereinto. Each craft would know the extent of its bargaining powers and the Carrier would know with which craft it was required to treat in particular matters. True collective bargaining for a craft, with the craft interests presented and urged by the representative chosen by a majority of the craft instead of by the representative chosen by a rival craft, would be facilitated.

We deem it proper to comment briefly upon certain groundless statements made by petitioner, lest by failure to do so acquiescence therein be inferred. Petitioner has ascribed an "ulterior" purpose to the Engineers because they wish to control the conditions under which demoted engineers will be returned to service in the engineers'

craft (Brief p. 20). It further says that in effect what the Engineers wish to do is to restore demoted engineers, who were demoted in order of seniority, to service as engineers in the order that the Engineers determine, and in connection with the latter statement says that the sole purpose of such an unreasonable claim is to give the engineers' Brotherhood such a control over promotions that they can compel any man having a seniority date as an engineer to join their organization in order to get fair treatment (Brief p. 18). Such charges are entirely gratuitous, and unsupportable in fact; indeed, no effort is made to support them. The Engineers' Schedule (R. 436) requires that demoted engineers be returned to service in the order of their seniority. The Engineers' Committee, no less than the Firemen's Committee, jealously guards craft rights, including seniority.

Even if these baseless charges were true, they would be wholly irrelevant. We have no doubt that both of the national Brotherhoods, whose General Committees on the Southern Pacific are involved in this case, are zealous, and properly so, for the rights of their members; and that the two General Committees are each zealous in their efforts to protect the rights of the respective crafts which they represent. But the issues here do not concern the welfare of national labor organizations. They are concerned with the rights of craft representation as established by law. We conceive it to be the duty of a representative chosen by a majority of a craft to take all proper steps to protect the interests of that craft when its preserves are being poached upon by another craft. The Engineers' Committee has invoked judicial proceedings for the purpose of having its case determined in orderly and lawful manner. The Circuit Court of Appeals reached a decision in which it was determined that there was merit in the Engineers' claims. Its decision was based upon legal considerations. The matter is before this Court for further review, and decision

will be made upon the basis of applicable law. Apparently petitioner's aspersions are an effort to surround the Firemen's desire for overreaching with a cloak of undeserved righteousness.

3. To permit the firemen's craft to negotiate rules governing the engineers' craft, including admission or re-entry thereinto, will invade the exclusive right of representation of the engineers' craft.

In the brief of the United States *amicus curiae* herein, at p. 39 it is said:

> "The Firemen, however, have the right to bargain with respect to the terms upon which men may enter or remain in firing service. The Firemen and the carrier are not required to permit the demoted engineers to return to firing. If they decide to grant the engineers that privilege, we do not think that the Act forbids them to protect the interests of the other firemen by appropriately conditioning its exercise."

A similar statement could with equal propriety be made concerning engineers: if engineers permit firemen, either demoted men or newly promoted men, the privilege of entering engineers' service they may protect the interests of other engineers by appropriately conditioning its exercise.

It is the contention of the Engineers, and in accord with the interpretation and holding of the Circuit Court of Appeals, that the Firemen could not "appropriately" condition the return of engineers to firing service by including among the conditions one which required the return of such demoted enginegrs to service as engineers under specified conditions; but that in conditioning the exercise of the return to firing service the Firemen may make only conditions governing service in the firemen's craft, the entry thereinto and removal therefrom; and that similarly only the Engineers may condition the acceptance or pro-

motion into the engineers' craft in respect to the services to be performed in that craft or entry thereinto or removal therefrom.

In saying (Brief, p. 39) that the firemen are bargaining with respect to firemen's working conditions when they require that demoted engineers who are permitted to return to firing service must be returned to service as *engineers* under specified conditions, the Government has gone one step beyond the permissible bargaining area of the firemen's craft. As long as the Firemen confine the conditioning of the exercise of the demotion privilege to conditions under which demoted men enter, remain in, and leave the firemen's craft, as held by the Circuit Court of Appeals, they are bargaining concerning firemen's working conditions, but when they seek to require that men whom they have removed from the firemen's list shall at once re-enter the engineers' craft, they are no longer bargaining for firemen's working conditions but for engineers' working conditions.

It seems to us that the Government admits the incorrectness of its position when it says (Brief p. 39) that the Firemen could not directly seek to prescribe the order in which men should be called to work as engineers, but at the same time says they may do so if it is made a condition under which they accept service as firemen, and when it also says (Brief p. 40):

> "We recognize, of course, that if the Firemen may condition the right of engineers to work as firemen in such a way as to protect their own economic interests, the practical effect may be substantially the same as if their jurisdiction overlapped that of the Engineers."

We submit that neither under the guise of conditioning re-entry into the firemen's craft, nor otherwise, may the Firemen lawfully determine conditions of entry or re-entry into the engineers' craft, or in any way limit the

mileage to be made by engineers. They should not be permitted to do indirectly what the law prohibits them from doing directly. The use of the indirect method which the Government indicates could be done, it says (Brief p. 40), results from the fact that the Engineers and the carrier

> "choose not to abandon the system whereby an engineer preserves his valuable firemen's seniority and the right to re-enter the firemen's craft at the top whenever the engineers' working force is reduced. The engineers could escape from any conditions imposed by the Firemen by giving up that right, which is derived from the Firemen's agreement. But as long as they retain it, they subject themselves to the necessity of harmonizing their views with those of the firemen on matters which are of concern to both crafts."

This apparently refers to Article 32, Section 6(a) of the Engineers' Schedule (Plaintiff's Exhibit 1, R. 435) which provision is similar to a part of the provision in the Firemen's Schedule found in Article 43, Section 1 (R. 604). A similar position is taken by petitioner (Brief p. 26) where it is said that the Engineers have a contract "which grants to their members the demotion privilege" and therefore "have neither moral nor legal basis for urging the railroad to abrogate its contract by which the Firemen grant and impose conditions upon the demotion privilege." (See other references to the same matter, Petitioner's Brief, pp. 6, 7, 27-8). Section 6(a) of Article 32 was incorporated therein prior to the 1934 amendment of the Railway Labor Act. Prior to the 1934 amendment there was no legal requirement that the carrier should treat and bargain only with a recognized craft representative concerning the rules governing the craft, and no legal barrier to either craft representative making agreements with the carrier which admittedly transgressed in the field of the other craft. But any and all provisions in either the Engineers or the Firemen's Schedules at the time the 1934 amendments became

effective which conflict with such amendments must yield thereto. (*Brotherhood of Railway Shopcrafts v. Lowden*, 86 F. 2d 458, 461; certiorari denied 300 U. S. 659). There had been no revision of the Engineers' Schedule subsequent to the 1934 amendments of the Railway Labor Act. But irrespective of provisions which may be found in either Schedule concerning the other craft, it has been the position of the Engineers' Committee in this litigation, from its inception, that under the provisions of § 2, Fourth, of the Railway Labor Act, as construed in the *Virginian R. Co.* case, *supra*, each craft has the exclusive right to contract with the carrier for all of the rules governing its craft, including entry thereinto and removal therefrom. It is perfectly clear, therefore, that the presence of the rule in the Engineers' Schedule regarding the re-entry of demoted engineers into the firemen's craft does not put the Engineers in an inconsistent position concerning its contention that it has the exclusive right to bargain for the conditions of entry or re-entry into the engineers' craft. It may be added that quite probably the Firemen may not be too insistent upon their argument in this matter, for their position, elsewhere taken in the brief (e.g., p. 22), is, categorically, that "the Engineers certainly could not make a contract to provide that engineers could be demoted to firing service and displace senior firemen from their jobs."

The Government's position that the Firemen are entitled to provide, as a condition of accepting demoted engineers into their craft, that such men should return to service as engineers under conditions stated by the Firemen, because such conditions are necessary to protect the economic interests of firemen, goes too far. Obviously, it is sufficient for the protection of the firemen's interests to provide for the conditions under which such men leave the firemen's craft. When they thus leave, these men no longer affect the regulation of the firemen's lists or the fortunes

of men belonging to the firemen's craft. Whether after leaving the firemen's craft such men return to work in the engineers' craft is for the determination by that craft. Similarly, the engineers' craft should determine the conditions under which engineers leave that craft; and whether, after being removed from the craft of engineers, such men return to work as firemen should be for determination by the firemen's craft.

As to whether a rule limiting the exercise of craft jurisdiction to the conditions under which men enter or leave the craft service would be impractical, as in the situation just mentioned, it may be noted that the Addendum to Article 43, which is concerned with "part time" men, i.e., men who are involved in the ebb and flow between the crafts, and work part of the time in one craft and part of the time in the other, illustrates the practical working of the situation wherein the mileage of the two crafts are different. Under the rules in the Addendum a part time man might be demoted from the engineers' working list on account of a reduction in business, although he had not made the maximum amount of mileage permitted by the engineers' rule. If under the Firemen's rule he had already made the equivalent of the firemen's maximum he would not be permitted to work as a fireman for the balance of the month, and, unless there would be some condition which would cause him to return to the engineers' list, would be out of a job for that period. It is apparent that no difficulty is encountered in the operation of the working rules in this regard.

In the brief of the Government (p. 41) it is further said that uniformity of provisions in the Engineers' and Firemen's Schedules concerning the movement of men from one craft to the other is desirable; that if the two crafts are unable to agree, the Carrier may contract with the two organizations concerning different provisions to the extent

it deems them workable. It is then suggested that if no such agreement can be reached, or if the Carrier is unwilling to enter into agreements with the two organizations containing different provisions concerning re-entrance of engineers into firing service, the Carrier could enter into a valid agreement with one (craft) and prescribe conditions for the other craft as in any case where an employer and the bargaining representative are unable to agree. We submit that under no circumstances can the Carrier enter into an agreement with the representative of one craft prescribing conditions for another craft which has its own representative.

This suggestion appears to be in direct conflict with the decision in the *Virginian R. Co.* case, *supra,* and with the position stated by the Government in its brief in that case, quoted by the Court at p. 548. The position there taken by the Government was that if a craft does not have a duly designated majority representative then the carrier may make such agreements as it will, and with whom it can, governing such craft. But if the craft has a duly designated representative the carrier "cannot make with anyone other than the representative a collective contract (i.e., a contract which sets rates of pay, rules and working conditions) whether the contract covers the class as a whole or a part thereof." We submit that the position of the Government as stated in its brief in the *Virginian R. Co.* case is the correct one. The fact that a carrier may not be able to make an agreement satisfactory to itself with the duly designated craft representative does not permit it to make an agreement with someone other than the craft representative. To do so, we believe, would defeat the purposes of the Act. It would encourage carriers to play one organization against another to obtain the best terms for the carrier to the detriment of all employees concerned. If a carrier is permitted under the Act to shop

around in such a manner there would have been no reason for the prohibition against dealing with the minority interest within the craft. We do not think that Congress intended to permit any kind of shopping around. The procedure suggested by the Government would provide for dual representation which, as hereinbefore shown, was eliminated from railroad labor relations by the 1934 amendments to the Railway Labor Act.

4. Section 1, Fifth, of the Act does not prevent the court from defining the bargaining jurisdiction of craft representatives. It relates only to the "self-organization" of employees, and has no application here.

At pp. 23-6 of its brief, petitioner points to § 1, Fifth, of the Act[1] as prohibiting the court from drawing a line of demarcation between the bargaining jurisdictions of the two crafts. The clause "* * * nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission," it is claimed, deprives the court of the right to construe the Act so as to define and limit the area within which the respective craft representatives may function.

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[1] Section 1, Fifth, provides: "The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission."

This contention evidently is advanced with questionable confidence in its soundness. At page 25 counsel say that if an organization were seeking to make a contract regarding a subject in which the members of its craft had no interest or only a secondary interest, the court would be justified in holding that such contract was invalid if in conflict with an existing contract held by an organization representing the craft which had a direct and immediate interest in the subject. This admission, we point out, concedes the propriety of the court's limiting the bargaining jurisdiction of a craft, at least under such circumstances, notwithstanding the supposed effect of § 1, Fifth. As developed at pp. 21-28 *ante*, it is our position that the firemen's craft has no interest, secondary or otherwise, which entitles its representative to negotiate or contract for rules governing engineers.

When the Act is construed as a whole, it will be seen that § 1, Fifth, has no such emasculating effect as that claimed by petitioner. The language of § 1, Fifth, upon which petitioner relies is to be construed in the light of the 1934 amendments. The fact, referred to at page 24 of petitioner's brief, that § 1, Fifth, was re-enacted in 1934 without change does not aid petitioner's argument. There was no prior administrative or judicial construction of § 1, Fifth, which may be presumed to have been adopted by Congress in the 1934 amendments as a particular interpretation, and consequently this section should be given a construction in harmony with the amendments. And in the case of disharmony between the new provisions and those reenacted in the course of amendment, the new provisions prevail as the latest declaration of the legislative will. I *Sutherland on Statutory Construction* (3rd Ed., 1943) p. 430.

Reading § 1, Fifth, along with the amendments of § 2, Fourth and Ninth, it is evident that if § 1, Fifth, is given the construction sought by petitioner, this section will con-

flict with § 2, Fourth and Ninth, as construed by this Court. Under petitioner's contention, § 1, Fifth, would be construed to confer upon the representative of one craft the right to negotiate with a carrier concerning the rules and working conditions of another craft, and thereby to require or permit the carrier to deal with two representatives regarding the latter's rules, in conflict with the holding in the *Virginian R. Co.* case (300 U. S. at pp. 548-9) that a carrier can negotiate a labor contract applicable to a given craft only with the representative designated by that craft.

It was clearly not the intent of Congress in passing the 1934 amendments to permit such dual or multiple representation. While it may be that prior to 1934, because of the absence of majority craft rule, any group of employees had free and unrestricted "jurisdiction" or "powers" to negotiate, such rights were taken away by the 1934 amendments, and new rights were given to crafts of employees (§ 2, Fourth and Ninth) and new obligations were imposed upon carriers (§ 2, Ninth). Dual representation was rejected and abolished. If, therefore, § 1, Fifth, be construed as having contemplated unlimited or multiple representation in the setting of the 1926 Act, it seems clear that such a construction is no longer permissible in view of the new and specific provisions for exclusive craft representation and bargaining.

But it is unnecessary and, indeed, erroneous to give § 1, Fifth, the meaning and effect attributed to it by petitioner. Its true construction renders it harmonious with the Act as a whole and does not conflict with § 2, Fourth and Ninth. The proviso in § 1, Fifth, was inserted in the 1926 Act[1] in aid of the purpose of establishing the right of

[1] The proviso appears to have been included in the 1926 Act to safeguard the right of employee self-organization in two respects. First, it had been felt by some persons that the provision of § 1, Fifth, respecting the use of the occupational classifications of the

(*Continued on next page*)

employees to organize into organizations of their own choosing.[2] Thus § 1 Fifth, finds application in the organization of many crafts or classes of employees in a form other than that referred to in the occupational classifications of the Interstate Commerce Commission. For example, mechanical employees, consisting of men employed in the crafts of machinists, boilermakers, blacksmiths, sheet metal workers, etc., have organized into a federation, and bargain and contract collectively through such federation, as shown in the *Virginian R. Co.* case. Clerical and station employees sometimes have grouped themselves in separate crafts, and at other times have organized as one craft, depending upon circumstances. Cf. *Brotherhood of Ry. & S. S. Clerks v. Nashville & St. L. R. Co.*, 94 F. 2d 97. Some employees on some roads have organized into so-called independent organizations. In short by § 1, Fifth, Congress left the employees untrammeled in the *organization* of such crafts or classes as they might desire and with

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(Continued from preceding page)

Interstate Commerce Commission in defining "employee" might be used as a means of deciding jurisdictional disputes. For example, if a clerk had been classified in a certain way by the Commission it might be contended that such classification would determine the craft to which he belonged. Second, in the provisions of the Howell-Barkley bill of 1924 setting up adjustment boards, employees classified within certain designated crafts or occupations were referred to specified boards, e.g., engineers, firemen and hostlers, conductors, trainmen, etc., were referred to Board No. 1, whose labor members were selected from nominations made by the nationally organized crafts. It had been claimed that these provisions solidified the definitions or classifications there made, and were intended to favor the national organizations and make permanent the organization of employees in the form thus indicated. It was the purpose of the proviso to meet these objections. See explanation given to the House Committee by Mr. Donald R. Richberg, a co-draftsman of the bill. Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 7180; 69th Cong. 1st Sess. pp. 64-5.

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[2] *Switchmen's Union v. National Mediation Board*, 135 F. 2d 785, 801 (dissenting opinion).

whatever internal structure or form might be designated by them. But § 1, Fifth, is not directed to the extent or manner of the *bargaining* which may be carried on by such employee organizations after they have been duly formed. That is the subject of § 2.

In the case at bar no question is presented as to the self-organization of the engineer and firemen employees. The trial court found (Finding 4 (a), R. 45) that the two crafts of locomotive engineers and locomotive firemen have been and are now recognized as *crafts or classes of employees within the meaning of the Act.* We submit that there is therefore no occasion for the application of § 1, Fifth, here.

At p. 24 of its brief, petitioner confuses the situation by reference to a type of jurisdictional dispute which is different from that involved here. Reference is made to jurisdictional disputes among such organizations as machinists, electrical workers, boiler makers or sheet metal workers over what *work* comes within the respective craft jurisdictions. Similar reference is made to jurisdictional controversies between telegraphers, clerks and dispatchers, presumably of the same character. This is the type of dispute commonly known to the public as a "jurisdictional dispute," i.e., where one craft competes with another for the right to perform a certain kind of work, as in the typical case of carpenters and metal workers competing to get the job of installing metal window trim.

Whether the Railway Labor Act furnishes any basis for the adjudication of such disputes may be left open here. In the case at bar, there is no dispute as to which craft is entitled to perform the work of running or firing a locomotive. The dispute in the instant case is over an entirely different matter, viz., the *bargaining* jurisdiction of the craft representatives. We think that petitioner's contention that the court cannot decide a controversy over he bargaining jurisdiction of two separate crafts because there

is no express provision in the Act expressly giving the court authority so to do, is unsound. Such authority, as we have pointed out, is implied in the necessity of determining craft boundaries in the enforcement of the right conferred by § 2, Fourth, upon the majority representative of each craft exclusively to negotiate the collective agreement governing the craft it represents, and the corresponding duty imposed by § 2, Ninth, upon the carrier to treat with no other representative on the subject.

III.

THE CIRCUIT COURT OF APPEALS DID NOT ERR IN HOLDING THAT THE CLEAVAGE OF THE POWERS OF THE FIREMEN AND ENGINEERS' CRAFTS TO AGREE WITH THE EMPLOYER IS AT THE POINT OF IMPOSING CONDITIONS OF ENTRY INTO THE ONE CRAFT OR THE OTHER.

It has been hereinbefore demonstrated that the crafts of locomotive engineers and firemen are separate and distinct, and have always been so; that regardless of the fact that some men may be employed part of the time in one craft and part of the time in another craft, the separateness and distinctiveness of the two crafts are not affected by this change of personnel, and that the jurisdiction of each craft to make the rules and regulations governing the craft is not and should not be affected by so-called interests of the other craft or its members. The Railway Labor Act contemplates collective bargaining by a craft or class through a representative designated by a majority of the craft or class, and since the locomotive engineers on the Carrier's railroad concededly constitute one craft or class, and the locomotive firemen employed on Carrier's railroad constitute a different craft or class, it would seem to be self-evident that each craft would have the sole bargaining rights concerning the rules and regulations which govern that craft. The holding of the Circuit Court of Appeals recognizes and gives effect to the obvious and

conceded fact that the crafts are separate. It denies and eliminates the specious claim of overlapping of the crafts or of their bargaining jurisdictions, and eliminates the impractical, unworkable, and unfair doctrine of dual craft representation. This recognition of the separateness of the two crafts at the natural point of separation, namely, the entry into the one craft or the other, results in an understandable and workable rule under which each craft representative knows the extent of its craft lines as to which it has the exclusive right of representation. It will put an end to the obvious desire of the firemen's craft representative to overreach into the engineers' craft for the illegal purpose of bargaining collectively for a craft of which it is not, and never has been, the designated representative. At the same time it recognizes and gives effect to the full measure of authority which the firemen's craft has in the government of its own craft.

In ordering the decree amended so as to provide that the Questions and Answers of Article 37, Section 15 are a valid exercise of the Firemen's bargaining power only in so far as said Questions and Answers relate to the rights of firemen as such, and that they are invalid in so far as they relate to the entry of a fireman into the craft of engineers (R. 826), the court was giving the same effect to the obvious line of cleavage between the crafts with respect to the calling of emergency engineers that it gave in its interpretation of the amendments to the decree concerning Article 43, Sections 2, 3, 4 and 6 (R. 823). There is an engineers' rule governing the matter of calling of engineers for emergency service (Plaintiff's Exhibit 10, R. 303-6). It provides that when it is necessary to call a demoted or hired engineer for emergency service the senior available engineer will be used, and further provides that his availability so far as his earned mileage is concerned will be determined under engineers' rules. While it thus appears that there is abundant room for conflict between

the two rules over the "availability" of the engineers to be called, with the consequent effect that the man who would be called under the Firemen's rule might not be the man who would be called under the Engineers' rule, the objection of the Engineers to these Questions and Answers was not merely that the rules do so conflict, but was also the more fundamental objection that the Firemen have endeavored thereby to regulate entry into the craft by the exercise of engineers' seniority.

There is no disagreement over the fact that the Questions and Answers relate to the calling for "service as an engineer." The Firemen contend, however, that the purpose of the Questions and Answers is to prevent the railroad from evading the provisions of the rule set forth in Article 37, Section 15, and to prevent the railroad from avoiding the payment of guaranteed mileage (Brief in support of cross petition for writ of certiorari, p. 20). To the extent that the Questions and Answers preserve the integrity of Section 15, the decree gives full effect thereto, for it provides that the Questions and Answers are valid "in so far as they relate to the rights of firemen as such." But to the extent that the Questions and Answers seek to regulate the entrance of a demoted man into the engineers' craft they are beyond the lawful area of the Firemen's right of bargaining. Hence, the propriety of the decree in declaring that the Questions and Answers are invalid "in so far as they relate to entry of a fireman into the craft of engineers." There is nothing ambiguous or confusing, as claimed by petitioner (Brief p. 33), about this amendment of the decree by the Circuit Court of Appeals. We submit that instead of the court's decision creating ambiguity and confusion it has distinctly clarified the issues in respect to its recognition of the line of cleavage between the crafts and the application thereof to the various rules of the Firemen's Schedule. In the light of this decision each craft knows definitely the extent of its powers and rights in bargaining collectively with the carrier.

IV.

DISCUSSION OF QUESTIONS PROPOUNDED BY THE COURT.

Our brief as petitioner in No. 27 contains a discussion of the questions propounded by the Court. Since that discussion is generally applicable to the issues here, we adopt it without repetition in this brief. Particular questions raised in the instant case and certain statements contained in petitioner's argument herein, however, appear to warrant the following supplemental discussion of the first two questions.

1. Whether resort to the declaratory judgment procedure is appropriate in the circumstances.

Petitioner's discussion of this question (Brief pp. 34-40) includes argument both as to the representation of grievances issue presented in No. 27 and the question of the mileage and other rules involved herein. We are in agreement, of course, with petitioner's conclusion that resort to the declaratory judgment procedure is appropriate in the instant case. Upon the question of whether there is a statutory procedure provided in the Railway Labor Act which would preclude the bringing of a suit for declaratory judgment here, referred to by petitioner (pp. 36-8), we add an additional comment. To hold it necessary that the mediation and Emergency Board provisions of the Railway Labor Act must be exhausted before suit for a declaratory judgment may be brought, or that the decision of an Emergency Board would preclude the bringing of such an action, we think, would be unwise policy. In the instant case, the schedule rules in question were agreed to by the Carrier and Firemen's Committee and announced as an accomplished compact. The Engineers thereafter might have invoked mediation under the threat of a strike and caused the appointment of an Emergency Board. But such a remedy is a war-like one, and has potentialities of

disaster which ought to be avoided, if possible. The authorization of a strike in itself seriously affects the normal operations of a carrier. Of course, as recognized by petitioner, an Emergency Board action does not have the salutary effect of a judicial decision. Indeed, the statutory function of such Board is simply to "investigate promptly the facts as to the dispute and make a report thereon to the President" (§ 10). It thus has no authority to make any decision and its recommendations and opinions, if any, are binding on no one. Neither Emergency Board action nor mediation satisfies the necessity for decision in a case like the present one. Since resort to mediation and Emergency Boards is at most an optional remedy in the settlement of railway labor disputes (cf. *Moore v. Illinois C. R. Co.*, 312 U. S. 630), we believe that the action of the Engineers in seeking the peaceful remedy of *adjudication* of their bargaining rights by the court is the preferable course of conduct. A declaratory judgment, said the Senate Committee in its report upon the Declaratory Judgments bill,[1] "declares conclusively and finally the rights of parties in litigations over a contested issue, a form of relief which often suffices to settle controversies and full administer justice." We believe that these functions will be served by the entry of a declaration in the case at bar.

2. Whether any questions of the construction of the contracts involved are governed by state or by Federal law.

The decree of the Circuit Court of Appeals in the instant case differs somewhat in form from that of the Fifth Circuit in No. 23, the *M.K.T.* case. In the latter case, the court's declaration went directly to the question of the validity or invalidity of the agreement. Here the declaration determines the validity of the agreement, but does so

[1] Senate Report No. 1005, 73rd Cong., 2d Sess., p. 2.

after making what may be considered to be an interpretation of the agreement, i.e., the firemen's mileage provisions were declared to be invalid in so far as they seek to prescribe conditions of re-entry into the Engineers' craft, etc. and were limited in their application to the conditions under which demoted engineers enter, remain in and leave the Firemen's craft, and the questions and answers were held to be valid only in so far as they relate to the rights of firemen as such and were held invalid in so far as they relate to the entry of a firemen into the craft of engineers. In substance and effect, the making of this interpretation of the agreement was simply a step in the process of the declaration of its validity or invalidity, and was incidental to the decision of the fundamental question in the case, namely, the validity of those provisions under the Railway Labor Act.

Since the validity of the contract is challenged on the ground that a Federal statute incapacitates the parties from making it, the effect of the contract and the extent of its obligation become Federal questions, and finality cannot be accorded the views of a state court. Cf. *Awotin v. Atlas Exchange Bank*, 295 U. S. 209; *Irving Trust Co. v. Day*, 314 U. S. 556, 561; *Standard Oil Co. v. Johnson*, 316 U. S. 481, 483. The ultimate decision in this case concerning the validity of the contract provisions in question is so thoroughly bound up in the Railway Labor Act that the legal relations which the Act affects "must be deemed governed by federal law having its source" in the Railway Labor Act "rather than by local law." *Sola Elec. Co. v. Jefferson Elec. Co.*, 317 U. S. 173, 176. Under such circumstances it would be both inappropriate and inexpedient for federal courts to search out and apply decisions of state courts with the unsatisfactory possibility as pointed out in our discussion of this point in No. 27, that conflicting decisions from different states might gover the same collective bargaining agreement.

CONCLUSION.

In enacting § 2 of the Railway Labor Act, Congress decided and declared that the purposes of the Act will best be accomplished by exclusive craft bargaining through a craft representative chosen by the majority thereof. In bargaining under the Act, such representative has the exclusive right to negotiate the collective bargaining agreement applicable to the craft it represents, and a carrier is prohibited from bargaining respecting such agreement with the representative of any other craft. The application of the line of cleavage made by the Circuit Court of Appeals herein conforms to and implements the law as thus stated, accords to each party its full rights under the Act, and protects the public interest by facilitating orderly collective bargaining in railroad disputes.

The judgment of the Circuit Court of Appeals with respect to Article 43 of the Firemen's Schedule, as interpreted in the court's opinion, viz., that "Sections 2, 3, 4 and 6 of Article 43 of the Firemen's Agreement shall be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said Sections are invalid in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to engineers' working lists, whether in passenger, freight, or extra service," and with respect to the Questions and Answers appended to Article 37, Section 15, should be affirmed.

Respectfully submitted,

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APPENDIX A.

The Railway Labor Act, as amended (Act of May 20, 1926, c. 347, 44 Stat. 577, Act of June 21, 1934, c. 691, 48 Stat. 1185, Act of Aug. 13, 1940, c. 664 §§ 2, 3, 54 Stat. 785; U. S. C., Tit. 45, §§ 151-163).

(Sections 3 and 7-11, omitted.)

Definitions

Section 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such a railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying

of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

GENERAL PURPOSES

SEC. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organiza-

tion of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to

such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invoca-

tion of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom

any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service without his consent.

NATIONAL MEDIATION BOARD

SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the "National Mediation Board," to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office for all successors shall expire three

years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $10,000 per annum, together with necessary traveling expenses and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1923, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, and [sic]

such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. All officers and employees of the Board of Mediation (except the members thereof, whose officers are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

FUNCTIONS OF MEDIATION BOARD

SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them

to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing on both sides give its interpretation within thirty days.

Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the con-

troversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this Act for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an

award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or

rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

APPENDIX B.

The Declaratory Judgments Act of June 14, 1934, c. 512, 48 Stat. 955, 28 U. S. C. § 400.

(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.

APPENDIX C.

The Norris-LaGuardia Act of Mar. 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. §§ 101-115.

SEC. 1. No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise

in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from any employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual

authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect

complainant's property: *Provided, however*, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make

every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct,

or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the

same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

Approved, March 23, 1932.

SUPREME COURT OF THE UNITED STATES.

Nos. 27 and 41.—October Term, 1943.

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company (An Unincorporated Association), Petitioner,

27 *vs.*

Southern Pacific Company and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (An Unincorporated Association).

General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (An Unincorporated Association), Petitioner,

41 *vs.*

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company, etc., et al.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[November 22, 1943.]

Mr. Justice Douglas delivered the opinion of the Court.

These are companion cases to *General Committee of Adjustment of the Brotherhood of Locomotive Engineers* v. *Missouri-Kansas-Texas R. Co.*, No. 23, and *Switchmen's Union of North America* v. *National Mediation Board*, No. 48, decided this day. They are here on a petition and on a cross-petition for writs of certiorari to the Circuit Court of Appeals for the Ninth Circuit. No. 41, the cross-petition, involves a dispute between the collective bargaining representatives of the locomotive engineers and of the locomotive firemen on the Pacific lines of the Southern Pacific Co. The controversy involves the same basic question as is present in the *Missouri-Kansas-Texas R. Co.* case. The committee for the en-

gineers (hereinafter called the Engineers) brought this action for a declaratory judgment that provisions of a June, 1939 agreement between the carrier and the committee for the firemen (hereinafter called the Firemen) concerning the demotion of engineers to firemen and the calling of firemen for service as emergency engineers were invalid under the Railway Labor Act. The courts below undertook to resolve the controversy. See 132 F. 2d 194, 202-206. For the reasons stated in the *Missouri-Kansas-Texas R. Co.* case we think that the questions are not justiciable issues under the Railway Labor Act.

The question presented in No. 27 is related to the questions in the other two cases. In the suit brought by the Engineers (No. 41) a declaratory judgment was also asked that Article 51, Sec. 1 of the collective bargaining agreement between the carrier and the Firemen was invalid under the Railway Labor Act. That section provides: "The right of any *engineer*, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded."

The question whether the Engineers were the exclusive representatives of engineers in the handling of their individual grievances was the subject of dispute by the Engineers with this carrier and also with the Firemen. It was one of several subjects on which the Firemen had a strike ballot taken in 1937. Following the vote to strike, the President appointed an Emergency Board[1] under § 10 of the Act to investigate and report on this and other disputes. The Board reported in 1937. The dispute has continued to date.

The Engineers and the Firemen are the majority representatives of their respective crafts under the Act. The Engineers contend that the Firemen have no right to represent men working as engineers in the handling of individual grievances involving an interpretation of the collective bargaining agreement which the Engineers negotiated. Their position is that under the Act they are the exclusive representative of the individual engineer in that class of disputes which he has with the carrier as well as

[1] The Board was appointed April 14, 1937, and was composed of G. Stanleigh Arnold, Charles Kerr, and Dexter M. Keezer.

the exclusive representative of the craft for purposes of collective bargaining. The District Court refused to declare that the inclusion of the word "engineer" in Article 51, Sec. 1 of the agreement was unlawful under the Act. The Circuit Court of Appeals affirmed that judgment. 132 F. 2d 194-202.

The Engineers place their chief reliance on those provisions of § 2 Fourth which state: (1) that employees "shall have the right to organize and bargain collectively through representatives of their own choosing"; and (2) that the "majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act". And it is pointed out that by reason of § 2, Eighth the provisions of § 2, Fourth become a part of each contract of employment. Some support is also sought from § 2 Second and Sixth. The former provides that "all disputes" between a carrier and its employees shall be considered in conference between representatives of the parties. The latter provision says that in case of a dispute as to grievances "it shall be the duty of the designated representative" of the carrier and of the employees to specify a time and place for a conference. From these provisions it is argued that the collective bargaining representative of a craft becomes the exclusive representative for all purposes of the Act—the protection of the individual's as well as the craft's interests. On the other hand, the carrier and the Firemen contend that the Act limits the exclusive representation of the collective bargaining agent to the interests of the craft. They contend that this is the true meaning of § 2, Fourth. They also rely on § 3, First (i) which states that prior to a reference of disputes between employees and carriers to the Adjustment Board they "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." They claim that "usual manner" means the prior practice and that that shows a uniform acceptance of the right of the aggrieved employee to select his own representative. They point out that § 2, Third and Fourth prohibit the carrier from influencing employees in their choice of representatives. The argument is that a contract by the carrier with the Engineers giving the latter the exclusive right to represent engineers in the presentation of their individual claims would in effect coerce all engineers into joining that union in violation of § 2, Third and Fourth.

The parties base their respective arguments not only on the language of the Act and its legislative history but also on various trade union practices and analagous problems arising under the National Labor Relations Act. From these various materials each seeks to prove that Congress has fashioned a federal rule (enforcible in the courts) concerning the authority of collective bargaining agents to represent various classes of employees on their individual grievances.[2] All of these would be relevant data for construction of the Act if the courts had been entrusted with the task of resolving this type of controversy. But we do not think they were.

We have here no question involving the representation of individual employees before the National Railroad Adjustment Board.[3] We are concerned only with a problem of representation of employees before the carriers on certain types of grievances[4] which, though affecting individuals, present a dispute like the

[2] Reference is also made to certain informal rulings by the National Mediation Board that the individual employee has the right under the Act to select his own representative in such a case. And considerable stress is given to the following statement of the Emergency Board, *supra* note 1, appointed in 1937:

"This legislation was enacted for the purpose of protecting national transportation against the consequences of labor disputes between carriers and their employees. It was devised by representatives of management, the employees, and the public. It secured the benefits of unhampered collective bargaining to the several crafts or classes engaged in the work of railway transportation. When a craft or class, through representatives chosen by a majority, negotiates a contract with a carrier, all members of the craft or class share in the rights secured by the contract, regardless of their affiliations with any organization of employees. It is clearly provided that these rights may be protected by negotiation or by the several methods of adjustment established by the Act. It is true that the representatives of the majority represent the whole craft or class in the *making* of an agreement for the benefit of all, but it is equally true that nothing in the Act denies the right to any employee, or group of employees, to enforce through representatives of his or their own choosing, his or their rights under any such agreement. The whole spirit and intention of the Act is contrary to the use of any coercion or influence against the exercise of an individual's liberty in his choice of representatives in protecting his individual rights secured by law or contract."

[3] The Act provides for proceedings before the Adjustment Board in disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. § 3, First (i). In such cases the parties "may be heard either in person, by counsel, or by other representatives, as they may respectively elect." § 3, First (j).

[4] These do not include personal injury claims and the like. They embrace claims which though strictly personal arise out of and involve an interpretation of the collective bargaining agreement which the Engineers negotiated and under which the individual engineer is working.

one at issue in the *Missouri-Kansas-Texas R. Co.* case. It involves, that is to say, a jurisdictional controversy between two unions. It raises the question whether one collective bargaining agent or the other is the proper representative for the presentation of certain claims to the employer. It involves a determination of the point where the exclusive jurisdiction of one craft ends and where the authority of another craft begins. For the reasons stated in our opinions in the *Missouri-Kansas-Texas R. Co.* case and in the *Switchmen's* case, we believe that Congress left the so-called jurisdictional controversies between unions to agencies or tribunals other than the courts. We see no reason for differentiating this jurisdictional dispute from the others. Whether different considerations would be applicable in case an employee were asserting that the Act gave him the privilege of choosing his own representative for the prosecution of his claims is not before us.

Reversed.

Mr. Justice JACKSON concurs in the result.

Mr. Justice ROBERTS and Mr. Justice REED are of the view that the Court should entertain jurisdiction of the present controversies for the reasons set out in the dissent in No. 48, *Switchmen's Union of North America, etc.* v. *National Mediation Board*, decided today.